IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3467 of 2000

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JIVRAJBHAI VALABHAI KAMI (KERALA) - Petitioner(s)
Versus
DISTRICT REGISTRAR 3RD SPECIAL LAND ACQUISITION & 3 - Respondent(s)

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Appearance :
MR ARPIT PATEL FOR MR MUKESH A PATEL for Petitioner(s) : 1,
MS LILU K BHAYA for Respondent(s) : 1 - 3.
MR DIPEN DESAI AGP for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 04/05/2007

ORAL JUDGMENT

1. Mr.Arpit Patel, learned counsel for the petitioner, Ms.Lilu K.Bhaya, learned counsel for the respondent Nos.1 to 3 and Mr.Dipen Desai, learned Assistant Government Pleader for the respondent No.4.

2. By this writ application, the petitioner seeks to challenge correctness, validity and propriety of the Recovery Certificate issued by the respondent Bank for making recovery in sum of Rs.86,503=83 ps. and Rs.25,022=09 ps. After receiving the Recovery Certificate, the Recovery Officer issued Sale Proclamation and fixed the auction on 25/4/2000. According to the petitioner, the Sale Certificate issued by the respondent Bank is patently illegal, because, the said amount was not outstanding and as and when the petitioner went to make the deposit, the respondent Bank received some money and enhanced their claim. It is also submitted that the respondent Bank had not given credit of a sum of Rs.10,000=00 which under the policy of the Government, was required to be given. Placing reliance upon the proceedings dtd.15/2/2007 recorded in this case, learned counsel for the petitioner submits that the respondents have not given details of the said credit.

3. Ms.Bhaya, learned counsel for the respondent Nos.1 to 3 on the other hand submits that on perusal of order dtd.23/3/1999 passed in Special Civil Application No.559 of 1999 (Jivrajbhai Valjibhai Vs. Gujarat State Co.Op....),

it would appear that a dispute between the same parties that the credit of Rs.10,000=00 was given in favour of the petitioner as debt relief by way of exemption was decided and now there cannot be a dispute about giving the credit between the parties. After going through para 4 of the above referred judgement, I must hold that the dispute relating to Rs.10,000=00 does not survive to be decided, because, earlier order between the same parties would operate as res-judicata .

4. So far as recovery of amount mentioned in the Recovery Certificate is concerned, this Court would not enter into any controversy relating to calculation. The petitioner, even otherwise, does not give any reason as to why the said amount should not be recovered, he has not shown any calculation mistake, nor had submitted that wrong interest was charged or interest was charged at a higher level.

5. Taking into consideration the totality of the circumstances, I am of he opinion that present petition deserves to be dismissed. It is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

6. Mr.Amit Patel, learned counsel for the petitioner submits that the petitioner has been asked by the respondent Bank for One Time Settlement in the matter, therefore, liberty be given to him to approach the authority for One Time Settlement.

7. If the respondents have invited the petitioner for One Time Settlement, then, the petitioner certainly would be entitled to approach the authority for One Time Settlement. It is, however, made clear that such One Time Settlement would be on the basis of policy floated by the respondent Bank and has nothing to do with the merits of the matter.

(R.S. GARG, J.)

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